

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

REVISED

NOTICE OF PROPOSED AMENDMENT AND RENUMBERING OF LOCAL RULE
10(d) AS LOCAL RULE 25(c) & NOTICE OF PROPOSED AMENDMENTS TO LOCAL
RULE 30(b) & INTERNAL OPERATING PROCEDURE 47.2

PLEASE TAKE NOTICE that the Court intends to amend Local Rule 10(d) and renumber it as Local Rule 25(c), and to amend Local Rule 30(b) and Internal Operating Procedure 47.2.

Current Local Rule 10(d) addresses the manner in which confidential and sealed materials included in an appendix, brief, motion, or other document are filed with the Court. As amended and renumbered, proposed Local Rule 25(c) retains the current requirement that sealed material included in the appendix be segregated from other portions of the appendix and filed in a separate, sealed volume of the appendix. With respect to a brief, motion, or other document that contains sealed material, however, the amended rule requires that two versions be filed--a complete version under seal in which the sealed material has been distinctively marked and a redacted version of the same document for the public file. Thus, for all documents other than the appendix, the sealed version of such documents shall be distinctively marked to indicate the sealed portions, but such sealed portions shall not be physically separated from the document. The amended rule also addresses the number of copies to be filed of sealed and public versions of a document containing confidential material; and reminds parties that any personal information not otherwise protected by sealing or redaction may be made available on the internet. The amended rule also requires that personal data identifying information be filed in accordance with section 205(c)(3) of the E-Government Act of 2002 and rules adopted thereunder. Proposed Federal Rule of Appellate Procedure 25(a)(5), which will govern the filing of personal data identifying information, is scheduled to take effect December 1, 2007. The proposed renumbering of Local Rule 10(d) aligns the Court's local rule with the proposed Federal Rule.

The proposed amendment to Local Rule 30(b) requires that the parties include in the joint appendix the final order or order appealed from, the complaint or petition (in civil appeals) and the indictment (in criminal appeals), as well as all other parts of the record which are vital to the understanding of the issues on appeal. This revision to the Notice of Proposed Amendment to Local Rule 30(b) issued on February 16, 2007, is necessitated by the added requirement that the final order or order appealed from be included in the joint appendix. In addition, amended Local Rule 30(b) requires that the table of contents to the appendix identify the name of each witness whose testimony is included in the appendix and the page number on which the testimony begins. Further, the name of the witness and the type of examination (direct, cross, redirect, or recross) must be identified at the top of each page of the appendix containing witness testimony. Exhibits must be listed in the table of contents by number or letter and by name or brief description.

The proposed amendment to I.O.P. 47.2 adds one representative of the federal bar association elected to the Federal Bar Council from the Fourth Circuit, each conference year, on a rotational basis, as an invitee to the Judicial Conference.

The proposed amendments will take effect on April 16, 2007, subject to revision in light of any comments received. Interested parties may submit comments on or before April 13, 2007, to:

Patricia S. Connor, Clerk
U.S. Court of Appeals for the Fourth Circuit
1100 E. Main Street, Suite 501
Richmond, Virginia 23219

March 5, 2007
Date

/s/ Patricia S. Connor
Clerk

Local Rule 10(d)- 25(c) Confidential and Sealed Materials.

(1) Certificates of Confidentiality. At the time of filing any ~~motion, brief, appendix, brief, motion,~~ or other document containing or otherwise disclosing materials held under seal by another court or agency, counsel ~~or a pro se party~~ shall file a certificate of confidentiality.

(A) Record material held under seal by another court or agency remains subject to that seal on appeal unless modified or amended by the Court of Appeals.

(B) A certificate of confidentiality must accompany any filing which contains or would otherwise disclose sealed materials. The certificate of confidentiality shall:

- (i) identify the sealed material;
- (ii) list the dates of the orders sealing the material or, if there is no order, the lower court or agency's general authority to treat the material as sealed;
- (iii) specify the terms of the protective order governing the information; and
- (iv) identify the appellate document that contains the sealed information.

(2) Motions to Seal. Motions to seal all or any part of the record are presented to and resolved by the lower court or agency in accordance with applicable law during the course of trial, hearing, or other proceedings below.

(A) A motion to seal may be filed with the Court of Appeals when:

- (i) a change in circumstances occurs during the pendency of an appeal that warrants reconsideration of a sealing issue decided below;
- (ii) the need to seal all or part of the record on appeal arises in the first instance during the pendency of an appeal; or
- (iii) additional material filed for the first time on appeal warrants sealing.

(B) Any motion to seal filed with the Court of Appeals shall:

- (i) identify with specificity the documents or portions thereof for which sealing is requested;
- (ii) state the reasons why sealing is necessary;
- (iii) explain why a less drastic alternative to sealing will not afford adequate protection; and
- (iv) state the period of time the party seeks to have the material maintained under seal and how the material is to be handled upon unsealing.

(C) A motion to seal filed with the Court of Appeals will be placed on the public docket for at least 5 calendar days before the Court rules on the motion, but the materials subject to a motion to seal will be held under seal pending the Court's disposition of the motion.

(3) Filing of Confidential and Sealed Material. ~~Counsel should place sealed material in a separate, sealed supplement to a brief, appendix, or other document, thereby avoiding the need to seal the entire item.~~

(A) Appendices: When sealed material is included in the appendix, it must be segregated from other portions of the appendix and filed in a separate, sealed volume of the appendix.

(B) Briefs, Motions, and Other Documents: When sealed material is included in a brief, motion, or any document other than an appendix, two versions of the document must be filed:

- (i) a complete version under seal in which the sealed material has been distinctively marked and
- (ii) a redacted version of the same document for the public file.

(C) Personal Data Identifying Information: Personal data identifying information, such as an individual's social security number, an individual's tax identification number, a minor's name, a person's birth date, a financial account number, and (in a criminal case) a person's home address, shall be filed in accordance with section 205(c)(3) of the E-Government Act of 2002 and rules adopted thereunder.

~~(A)~~(D)Marking of Sealed and Ex Parte Material: The first page of any ~~appendix, brief, motion, or other~~ document tendered or filed under seal ~~pursuant to this rule~~ shall be conspicuously marked SEALED and all copies shall be placed in an envelope marked SEALED. ~~If the material was sealed~~

by another court or agency, the envelope will be accompanied by a certificate of confidentiality. If filed ex parte, the first page and the envelope shall also be marked EX PARTE.

(B) If the confidential material is filed ex parte, the material and envelope will be marked EX PARTE in addition to SEALED. Absent such an EX PARTE notation, the material will be available to counsel of record in the case. A motion is required for release of sealed materials to anyone other than counsel of record.

(C)(E) Number of Copies: Only 4 copies of a sealed portions of briefs, appendices, or other documents appendix, brief, motion, or other document shall be filed, with 4 copies of the certificate of confidentiality or motion to seal. Unsealed volumes of the appendix and redacted copies of the public brief, motion, or other document shall be filed in conformity with Local Rules 30(b) (appendices); 31(d) (briefs); 27(c) (motions); and 25(a)(2) (other documents).

(D)(F) Responsibility for Compliance: The responsibility for following the required procedures in filing confidential and sealed material rests solely with counsel and the parties. The clerk will not review each filing for compliance with this rule.

(G) Public Access: Parties must remember that any personal information not otherwise protected by sealing or redaction may be made available over the internet. Counsel should notify clients of this fact so that an informed decision may be made on what information is to be included in a document filed with the Court.

Local Rule 30(b). Appendix Contents; Number of Copies.

In designating or agreeing upon the contents of the appendix, and in assembling the appendix, the parties should avoid unnecessary duplication of materials. The appellee's designation should only include those additional parts of the record to which it wishes to direct the Court's attention that have not already been designated by the appellant.

The use of a selectively abridged record allows the judges to refer easily to relevant parts of the record and saves the parties the considerable expense of reproducing the entire record. Although there is no limit on the length of the appendix except as provided in Local Rule 32(a), it is unnecessary to include everything in the appendix. The appendix should, however, contain the final order or order appealed from, the complaint or petition, as finally amended (civil appeals) or indictment (criminal appeals), only those as well as all other parts of the record which are vital to the understanding of the basic issues on appeal. Although the entire record is available to the Court should it believe that additional portions are important to a full understanding of the issues, citations to portions of the record not included in the appendix is not favored. ~~The use of a selectively abridged record allows the judges to refer easily to relevant parts of the record and saves the parties the considerable expense of reproducing the entire record.~~

The table of contents to the appendix should be sufficiently detailed to be helpful to the Court. Referring to the transcript of a trial under a single reference to "proceeding" or "trial transcript" is not sufficient. When the testimony of a witness is included in the appendix, the testimony should be clearly identified in the table of contents, beneath the proceeding in which it occurred. The name of the testifying witness and the type of examination (e.g., direct, cross, redirect, or recross) should also be clearly indicated at the top of each page of the appendix where the witness's testimony appears. Exhibits should be listed in the table of contents by number or letter and by name or brief description.

In all criminal appeals seeking review of the application of the sentencing guidelines, appellant shall include the sentencing hearing transcript and presentence report in the appendix. The presentence report must be included in a separate sealed volume, stamped "SEALED" on the volume itself and on the envelope containing it, and be accompanied by a certificate stating that the volume contains sealed material.

Pursuant to the authority granted by FRAP 30(a)(3), the Court requires that only six copies of the appendix must be filed with appellant's opening brief and a copy served on counsel for each party separately represented. Appointed counsel may file five copies and any party proceeding in forma pauperis who is not represented by Court-appointed counsel may file four copies. If the Court allows a deferred appendix the parties routinely file four page-proof copies of the brief in lieu of the requisite number of copies. After the deferred appendix is filed, the parties must replace their page-proof copies with the requisite number of copies of their final brief, which must contain proper references to the appendix.

I.O.P.-47.2. Bar Membership in the Judicial Conference of the Circuit. Commencing with the 2005 2007 conference, the members of the conference of the bar are as follows:

A. Ex officio members.

1. The Attorney General of the United States, or designee.
2. The presidents of the state bar associations of the states of the Circuit. When two bar associations in the same state are both recognized under this rule, the president of each shall be entitled to attend, and the maximum number of members of the conference from the bar, from any state, under this provision, shall be limited to two. As long as there is only one state bar association in Maryland, the Bar Association of Baltimore City may be treated as a state bar association under this provision.
3. One representative of the federal bar association elected to the Federal Bar Council from the Fourth Circuit, each conference year, on a rotational basis.
34. All United States Attorneys in the Circuit.
45. All Federal Public Defenders in the Circuit.
56. All Community Defenders in the Circuit.
67. All Chief Justices of the courts of last resort of the states comprising this Circuit.
78. All Attorneys General of the states comprising this Circuit.
89. The Chief Judge of the United States Court of Appeals for the Armed Forces.
910. The Chief Judge of the United States Tax Court.
1011. One representative of each accredited law school within the Circuit.